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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,158	02/27/2002	Paul Beck	086759.00006	2670
34261 7590 09/30/2009 HOLLAND & KNIGHT LLP 633 WEST FIFTH STREET, TWENTY-FIRST FLOOR LOS ANGELES, CA 90071-2040				
EXAMINER				
HSIAO, JAMES K				
ART UNIT		PAPER NUMBER		
3657				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/086,158

Applicant(s)

BECK, PAUL

Examiner

JAMES K. HSIAO

Art Unit

3657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each independent claim recites the limitation "an inelastic reinforcing ribbon of a flexible tear-resistant material," it is unclear because it is not understood how a material can be flexible and inelastic. It is assumed that if a material is flexible, then it has some degree of elasticity.

Claims 1-24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It appears that applicant has amended the claims to include the limitation "injection" with regards to adhesive and tape. The term "injection" is not clear because any structure wherein a material is introduced or injected can be interpreted several different ways and is merely a product-by-process claim limitation.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18-21 rejected under 35 U.S.C. 102(b) as being anticipated by Marty et al. (US-2985222).

Regarding claims 18-21, Marty discloses an outer length of flexible tear-resistant material (fig 1) having mating extended ends (figs -9) so as to form a closed loop and defining an endless channel (6) extending longitudinally therethrough (fig 4), an inelastic reinforcing enforcing ribbon (8) of a flexible tear-resistant material (col. 3, lines 24-28) disposed within said channel (figure 2), said ribbon defining first and second ends and extending across said mating ends of said outer length of material and twice about said loop defined by said outer length of material so as to define two layers of reinforcing ribbon within said outer length of material (col. 4, lines 9-21), said first end of said ribbon being disposed adjacent to said second end thereof, said adhesive being disposed about said layers of ribbon (col. 3, lines 14-25) and securing together said layers of ribbon and securing said ribbon to said outer length of material to maintain said outer length of material in said closed loop (col. 3, lines 14-25). And regarding claim 20, Marty discloses a slit extending the length thereof from said outer surface to said channel. Examiner interprets the slit in such a way that the channel (6) of Marty is also a slit, namely the space above (3) in figure 2 and below the top surface of (4').

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1- 17 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marty et al. (US-2985222) in view of Takashima (US-4655732).

Regarding claims 1, 6, 8, 9, 13, 17, 22, 23, 24, Marty et al. discloses an outer length of flexible tear-resistant material (fig 1) having mating extended ends (figs -9) so as to form a closed loop and defining an endless channel (6) extending longitudinally therethrough (fig 4), an inelastic reinforcing enforcing ribbon (8) of a flexible tear-resistant material (col. 3, lines 24-28) disposed within said channel (figure 2), said ribbon defining first and second ends and extending across said mating ends of said outer length of material and twice about said loop defined by said outer length of material so as to define two layers of reinforcing ribbon within said outer length of material (col. 4, lines 9-21), said first end of said ribbon being disposed adjacent to said second end thereof, said adhesive being disposed about said layers of ribbon (col. 3, lines 14-25) and securing together said layers of ribbon and securing said ribbon to said outer length of material to maintain said outer length of material in said closed loop (col. 3, lines 14-25). And regarding claim 13, Marty discloses a slit extending the length thereof from said outer surface to said channel. Examiner interprets the slit in such a way that the channel (6) of Marty is also a slit, namely the space above (3) in figure 2 and below the top surface of (4').

Marty et al. lacks wherein the adhesive is injected. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its

method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Takashima teaches wherein an adhesive is injected into the belt to keep a reinforcing member adhered to a belt (col. 8, lines 60-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to inject the adhesive in the channel to adhere the belt to the reinforcing ribbon because when injecting, a boundary surface between the resin and the belt can be made rugged to increase the adhesive strength (col. 8, lines 60-65).

Regarding claim 2, Marty discloses wherein the ribbon is of a braided construction and cooperates with its adhesive (col. 3, lines 20-23).

Regarding claims 3, 7, 12, 15 and 16, Marty discloses wherein the ribbon can be made from two different materials (col. 3, line 26).

Regarding claims 4 and 5, it is merely a design choice as to what strength of adhesive is selected and would have been obvious to one ordinary skilled in the art at the time the invention was made to select an adhesive of necessary strength.

Regarding claim 10, marty et al. discloses wherein the mating ends of said outer length of flexible tear-resistant material define a first location (5) on said closed loop and said first end portion of said reinforcing ribbon overlaps (col. 4, lines 9-21) said second end portion thereof along a second location on said closed loop, said first location being

substantially diametrically opposed across said loop from said second location (col. 4, lines 9-21).

Response to Arguments

Applicant's arguments filed 6/19/09 have been fully considered but they are not persuasive. As broadly claimed, the Marty reference reads over the current claims. Applicant argues that the wraps of adhesive tape do not read on the slit/tape configuration of the present claims. Though it is well understood what the differences between the present invention and Marty reference, examiner takes the broadest reasonable interpretation of the claims. The present claim limitations allow several interpretations of the Marty reference to be made. For example, since there are several layers of adhesive tape in channel 66, the first layer can be interpreted as the tape and the second, or third, or fourth, etc. layer can be interpreted as the injected adhesive. Such an interpretation is allowed to be made given the broadness of the claim limitations. The limitation "injected" itself, is considered a product by process limitation. Product-by-process claims are not limited to the manipulations of the recited steps, only the structure (MPEP 2113). Applicant argues this limitation as if it is a structural limitation when the product made after the injection is that of Marty. If it is held that this interpretation is not sufficient, examiner points applicant to the 103 rejection in which the injecting of adhesive is combined with the belt and tape of Marty. In any of the figures 1-20 of Marty, the slit is interpreted as the space the tape is located. The art of injecting adhesive is very well known in the art and one of ordinary skill would find it obvious to

do so. The performance of the Marty or combined Marty/Takashima references is irrelevant as structurally, they result in the same product as the present invention.

Applicant has also argued the 112 rejection concerning the claim limitation "inelastic reinforcing ribbon of a flexible tear resistant material." Examiner notes that even though this limitation has been used in prior patents, it is still not clear for the following reasons. The term inelastic is defined as something that holds no elastic properties. It is not clear how something can be flexible but inelastic. Examiner understands what the properties of the present invention holds, but it is not said with this limitation. Even though the belt may be able to be bent in a flexible manner, and not stretched in a compressive or tensile direction, it still holds some form of elasticity.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES K. HSIAO whose telephone number is (571)272-6259. The examiner can normally be reached on Monday through Friday 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JKH

/Robert A. Siconolfi/
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